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Supreme Court of the United States

OCTOBER TERM, 1954

No. 221

MURPHY CORPORATION

and

NATURAL GAS AND OIL CORPORATION, PETITIONERS

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE, STATE OF LOUISIANA, RESPONDENT

NATURAL GAS AND OIL CORPORATION

and

MURPHY CORPORATION, PETITIONERS

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE, STATE OF LOUISIANA, RESPONDENT

(Consolidated Cases)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

MURPHY CORPORATION and Natural Gas and Oil Corporation, petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana entered in the above entitled consolidated cases on March 22, 1954.

I.

OPINIONS OF THE COURTS BELOW

The opinion of the Nineteenth Judicial District Court of Louisiana for the Parish of East Baton Rouge, the Trial Court, and of the Supreme Court of Louisiana are not reported. The opinions of the Trial Court appear in the record commencing at pages 47, 107 and 112 and are annexed hereto as Appendix I. The opinion of the Supreme Court of Louisiana appears in the record commencing at page 158 and also is annexed hereto as "Appendix II."

II.

JURISDICTION

1. The judgment herein sought to be reviewed was entered on March 22, 1954 (R. 158), an application for rehearing was timely filed on April 2, 1954 (R. 170) and refused on April 26, 1954 (R. 177).

2. On the same day the rehearing was refused, the Supreme Court of Louisiana entered an order staying the execution of the judgment and the issuing of a mandate to enable your petitioners to apply to this Court for a writ of certiorari (R. 182).

3. The Supreme Court of the State of Louisiana is the highest court of the state.

4. The judgment of which review is sought is a final judgment of the Supreme Court of Louisiana.[1]

5. Jurisdiction of this Court is invoked under Title 28, U.S.C., Sec. 1257.

III.

THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the State of Louisiana can lawfully levy severance taxes on oil and gas produced from, and gas gathering taxes on gas gathered on, a Federal military reservation over which the United States has acquired exclusive jurisdiction by virtue of Article I, Paragraph 8, Clause 17, of the Constitution of the United States, and Act 12 of 1892, as amended by Act 31 of 1942, of the Legislature of Louisiana, or by virtue of said acts alone, when the oil and gas is being produced under a lease executed by the United States in order to protect the reservation from drainage of such oil and gas by third parties.

2. Whether the execution by the United States of a protective oil and gas lease had the effect, as a matter of law and under the facts relating to its execution, of relinquishing exclusive jurisdiction over that portion of a

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1. Louisiana Code of Practice Article 911 provides that judgments rendered in the State Supreme Court shall become final on the fifteenth calendar day after rendition unless in the interval an application for a rehearing has been applied for.

Federal military reservation affected by such lease and, as an ancillary question, whether the judicial admission of respondent, contained in paragraph 4 of the stipulation, (R. 135) that such exclusive jurisdiction as may have been acquired by the United States over the lands in question had been continuously exercised since such acquisition, is controlling.

3. Whether the authority of the United States granted to it by Section 2 of Act 12 of the Legislature of Louisiana of 1892, as amended by Act 31 of 1942, which acts consent to the acquisition by and cede exclusive jurisdiction to the United States, becomes inoperative as to lands used for any purpose in addition to that for which acquired.

4. Whether the inclusion of a provision[2] in a protective oil and gas lease, obligating a lessee of the United States to pay all State taxes "lawfully assessed", had the effect of requiring such lessees to pay the taxes sought to be collected in these suits, which otherwise could not lawfully be assessed because of exclusive legislative jurisdiction in the United States.

5. Whether the decisions of this Court involving the immunity from taxation of governmental functions have any bearing on the issues presented in these cases.

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2. Section 2 (7) (k) of the lease (R. 24) provides that the lessees are "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from lands hereunder, or other rights, property or assets of the lessee; . . ."

IV.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provision of the United States Constitution which these cases involve is Article I, Paragraph 8, Clause 17, which reads as follows:

> "The congress shall have power . . . . . To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;"

The statutes of the State of Louisiana which these cases involve are Act 12 of 1892 and Act 31 of 1942.[3]

Act 12 of 1892 reads:

> "Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, re-

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3. In 1950, the Acts of Louisiana were codified. Certain provisions of this Act were reproduced as Louisiana Revised Statutes 52:1. Although the provision of the Revised Statutes is quoted in the State Supreme Court opinion, the acts are controlling, as exclusive jurisdiction had vested prior to such codification.

quired for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

"Sec. 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation."

Act 31 of 1942 reads:

"Section 1. Be it enacted by the Legislature of Louisiana That Sections 1 and 2 of Act No. 12 of 1892 be amended and re-enacted so as to read as follows:

"Section 1. Be it enacted by the Legislature of Louisiana, That the consent of the State of Louisiana is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this State required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States.

"Section 2. That the United States may enter upon and occupy any land in the State of Louisiana which it has heretofore acquired, or may hereafter acquire, by purchase, condemnation, lease or otherwise, required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States, and shall have the right of exclusive jurisdiction over the property so acquired, during the time that the United States shall be or remain the owner or lessee thereof, for all purposes, except that the State retains the right to serve therein all civil and criminal process issuing under authority of the said State, and all lands so held and title to which is vested in the United States shall be and remain exempt from all state, parochial, municipal or other taxation, assessment or other charges which may be levied or imposed by or under authority of this State."

V.

STATEMENT OF THE CASE

These consolidated cases involve the right of the State of Louisiana to collect severance and gas gathering taxes on oil and gas produced and gathered on military lands over which the United States acquired exclusive jurisdiction.

In 1930, while Act 12 of the Louisiana Legislature of 1892 was the effective law of that state, the United States acquired, without restriction as to use, approximate-

ly 22,000 acres of land in Bossier Parish, Louisiana (See deeds R. 138 to 150 inclusive). These lands now comprise Barksdale Air Force Base. (Par. 3 of Stipulation, R. 135).

During 1930, 1931 and 1932 the facilities of the base were constructed on the lands in question, and since 1932 same have been used continuously as a military air base. (Par. 3 of Stipulation, R. 135) The lands were under the jurisdiction, custody and control of the Secretary of War from the date of acquisition until such was assumed by the Secretary of the Air Force under authority of the Act of Congress approved July 26, 1947, as amended, (5 U. S. C. 626 et seq.). Since that date to the present the lands have been under the jurisdiction, custody, and control of the latter officer. (Pars. 3 and 4 of Stipulation, R. 135).

Respondent admits that continuously since acquiring the lands comprising Barksdale Air Force Base the United States has exercised such jurisdiction thereover as may have been vested in it by virtue of the Constitution and laws of the United States and of the State of Louisiana. (Par. 4 of Stipulation, R. 135).

Respondent also admits that under the authority of and in accordance with the Act of Congress approved June 28, 1930, as amended by the Act of Congress approved February 1, 1940, and further amended by the Act of Congress approved October 9, 1940, (40 U. S. C. 255), the Secretary of War of the United States addressed a letter, dated April 16, 1943, to the Honorable Sam H.

Jones, Governor of Louisiana, accepting exclusive jurisdiction over all lands acquired by the United States for military purposes, which letter was acknowledged by said Sam H. Jones on April 20, 1943, and continuously since that time the United States has exercised such jurisdiction over the lands comprising Barksdale Air Force Base as may have been vested in or acquired by it by virtue of said letter and the Constitution and laws of the United States and the State of Louisiana. (Par. 4 of Stipulation, R. 135).[4]

In 1951 the United States determined that portions of the lands embraced in the Barksdale Air Force Base were being extensively drained of minerals through wells situated on privately owned lands abutting or adjacent to such lands and for that reason and in order to protect the property of the United States it was deemed expedient to offer to lease approximately 2,060 acres. (Par. 5 of Stipulation, R. 135 and 136).

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4. In 1940 (40 U.S.C. 255) the Congress provided that exclusive jurisdiction would not attach to all federal property in states unless such exclusive jurisdiction was accepted through the head of the department having jurisdiction, custody and control of the property. Prior to that date, the consent of the state to the purchase was all that was necessary to vest exclusive jurisdiction in the Federal Government. **Fort Leavenworth Railroad Company v. Lowe**, 114 U.S. 525, 29 L. Ed. 264; **Surplus Trading Company v. Cook**, 281 U.S. 647, 74 L. Ed. 1091; **United States v. Tucker**, 122 Fed. 518; **United States v. Wurtzbarger**, 276 Fed. 753. As the area here was acquired prior to 1940, acceptance of jurisdiction was not necessary. However the letter referred to accepts such jurisdiction over all lands in Louisiana acquired by the United States for military purposes over which exclusive jurisdiction had not already been acquired. (R. 151).

In order to carry out such decision to lease, Public Land Order No. 701, dated February 21, 1951 (16 F.R. 1901) was regularly issued, pursuant to Executive Order No. 9337, dated April 24, 1943. This public land order directed the Secretary of the Interior to take such action as might be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands, "subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes," and required that any proposed lease be submitted to the Department of the Air Force to "assure that there is no interference with the primary use of Barksdale Air Force Base." (R. 155).

Under and in accordance with Public Land Order No. 701, supra, an oil and gas lease was offered on approximately 2,060 acres of that tract. At the offering Natural Gas and Oil Corporation and W. R. Stephens were the successful bidders and in due course a lease was executed to them. (R. 17). Thereafter, W. R. Stephens assigned his interest in such lease to Murphy Corporation. (Par. 9 of Stipulation, R. 137).

The lease was not executed under the Leasing Acts (30 U.S.C. 181 et seq. and 30 U.S.C. 351) but instead under and in accordance with an opinion rendered on April 2, 1941 by Attorney General Jackson. (40 Op. A. G. 41).[5]

5. The State Supreme Court said: "The present lease was not made under the Federal Leasing Act of February 25, 1920, 30 U.S.C., Sec. 186, et seq." (R. 164).

Respondent insisted that petitioners pay oil and gas severance taxes levied by virtue of Louisiana Revised Statutes 47:631 et seq and gas gathering taxes levied by Louisiana Revised Statutes 47:671 et seq. with respect to oil and gas produced by petitioners from the leased premises.

Petitioners resisted the payment of such taxes for the reason that exclusive jurisdiction over the area was in the United States.

The incidence of taxation with respect to severance taxes occurs at:

> "The point at which the natural resources are severed from the surface of the earth or water," [L.R.S. 47:634(3)]

which, of course, is on Barksdale Air Force Base. Petitioners alleged that the gathering of gas took place within the confines of said base (Petitioners' complaint, Art. 11, R. 13), which allegations were admitted, (Respondent's answer, R. 44).

Petitioners under and in accordance with Louisiana Revised Statutes 47:1576 paid under protest the taxes claimed by the State of Louisiana and thereafter instituted what is now State Supreme Court No. 41,369 to recover the severance taxes paid and what is now State Supreme Court No. 41,368 to recover the gas gathering taxes paid.

These causes involve identical questions and were consolidated in the trial court for purposes of trial. (R. 5)

They were consolidated in the State Supreme Court for purposes of argument and decision. One judgment disposing of both causes was rendered by the State Supreme Court. (R. 158).

The Federal question of substance which has been decided by the Supreme Court of Louisiana is that after finding that exclusive jurisdiction was in the United States over lands owned by the United States used as a military base, arising under Article I, Paragraph 8, Clause 17, of the Constitution of the United States, and under Act 12 of the Legislature of Louisiana for 1892, as amended by Act 31 of 1942, or by virtue of said acts alone, such exclusive jurisdiction was relinquished by the United States as to that portion of such base affected by a protective mineral lease executed by the United States to petitioners, thereby depriving petitioners of their immunity from state severance and gas gathering taxes on the production and gathering of oil and gas within the limits of the military base.

The Federal question presented was raised in the court of the first instance throughout the complaints of petitioners by general allegations and specifically in Articles 12 and 13 in State Supreme Court Suit No. 41,368 (R. 13 and 14) and specifically in the same numbered articles in State Supreme Court Suit No. 41,369 (R. 70 and 71). As the basis of petitioners' position, petitioners especially pleaded in Article 5 of the petitions in both suits Article I, Paragraph 8, Clause 17, of the Constitution of the United States (R. 11 and 68), and in Article 6 of the

petitions in both suits the Statutes of Louisiana through which the immunity from state taxation claimed by petitioners arose. (R. 11 and 68).

In the court of first instance respondent excepted to the complaints of petitioners as setting forth no cause and no right of action which put squarely at issue the questions of law. These exceptions were overruled by the trial court. In its written reasons for so doing the Court said:

> "Thus, the issues tendered on the exception of no cause or right of action present determination of the question of whether or not the United States had acquired exclusive jurisdiction over the lands on which the lease was granted, and, if, in fact, the United States had acquired such jurisdiction, it has subsequently retroceded its exclusive jurisdiction to such an extent as to permit the State of Louisiana to collect a severance tax on the oil and gas produced by plaintiff from said lease." (R. 108)

The trial court held:

> "In my opinion insofar as the State of Louisiana is concerned, this land, because of the exclusive jurisdiction granted to the United States, is beyond the power of the state to tax or control and the state is limited to such jurisdiction as the Congress of the United States may retrocede to it." (R. 111).

The trial court cited as authority for its holding: *Surplus Trading Company v. Cook*, 281 U.S. 647, 74 L. Ed. 1091; *S. R. A. v. Minnesota*, 327 U.S. 558; 90 L. Ed.

851; *Yellowstone Park Transportation Company v. Gallatin County*, 31 Fed. 2d 644. (R. 110 and 111).

In disposing of the causes on the merits, the trial court held for petitioners, adopting its findings with respect to the exceptions as the basis for so doing. (R. 47 and 112).

By reason of an appeal being taken to the State Supreme Court the Federal question raised by the complaint and decided by the court of the first instance was, of necessity, presented to the Supreme Court of Louisiana. The Federal question thus presented was submitted to the State Supreme Court in briefs and oral argument filed and made by all parties and was passed upon by the latter Court when it said:

> "***the theoretical concept, advanced by plaintiffs, of immunity, like an alien thread, should be discarded." (R. 168)

The State Supreme Court found that exclusive jurisdiction was in the United States, saying:

> "We do not deny the exclusive federal jurisdiction over the donated lands***" (R. 162)

and

> "Exclusive legislative jurisdiction was granted to the federal government over the air base". (R. 163)

The State Supreme Court found, however, that:

> "In the operation of the oil field, the lessees were not militarily engaged" (R. 163)

and that

> "The adoption of plaintiffs' contention by our learned brother of the district court would in the future operate as an unwise boycott against the rights of the State of Louisiana to levy non-discriminatory severance taxes" (R. 168),

reversing the judgment of the trial court.

Justice Hawthorne of the Supreme Court of Louisiana in his dissenting opinion said:

> "The lands on which the gas was gathered and from which the oil and gas were produced are a part of Barksdale Air Force Base, a military air base owned by the United States, and under the stipulation of facts and the exhibits attached these lands in my opinion are under the exclusive jurisdiction of the United States by virtue of the provisions of Article I, Paragraph 8, Clause 17, of the Constitution of the United States and Louisiana Act 12 of 1892 as a mended by Act 31 of 1942, in which the state of Louisiana surrendered and granted the right of exclusive jurisdiction to the United States.
>
> "Since the United States is vested with exclusive jurisdiction, the State is without power to levy and collect the taxes under the holding of the Supreme Court of the United States in the case of Surplus Trading Company v. Cook, 281 U. S. 647, 50 S. Ct. 455, 74 L. Ed. 1091. See also S. R. A., Inc. v. Minnesota, 327 U.S. 558, 66 S. Ct. 749, 90 L. Ed. 851." (R. 169).

VI.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The Supreme Court of Louisiana has decided an important question arising under Article I, Paragraph 8, Clause 17 of the Constitution of the United States and an important question arising under Louisiana's cession statutes whereby exclusive jurisdiction in the United States is vested over lands utilized by it for military purposes. This decision is in conflict with the applicable decisions of this Court.

The rule upon which petitioners rely was enunciated by this Court in *Surplus Trading Company vs. Cook*, 281 U.S. 647, 74 L. Ed. 1091,[6] which held that under the mentioned constitutional provision, not only were states denied the right to tax property belonging to the Federal government and located on such Federal areas, but were also denied the right to tax anyone or anything within such areas in view of the exclusive nature of the jurisdiction vested in the central government. This Court in *S. R. A., Inc. vs. Minnesota*, 327 U.S. 558, 562, 90 L. Ed. 851, 856, said,

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6. Followed or approved in **Standard Oil Co. vs. California**, 291 U.S. 242, 78 L. Ed. 775; **James vs. Dravo Contracting Co.**, 302 U.S. 134, 82 L. Ed. 155; **Silas Mason Co. v. Tax Comm. of Washington**, 302 U.S. 186, 82 L. Ed. 187; **Collins vs. Yosemite Park & Curry Co.**, 304 U.S. 518, 82 L. Ed. 1502; **S.R.A., Inc. vs. Minnesota**, 327 U.S. 558, 90 L. Ed. 851.

"Exclusive legislative power is in essence complete sovereignty. That is, not only is the federal property immune from taxation because of the supremacy of the federal government but state laws, not adopted directly or impliedly by the United States, are ineffective to tax or regulate other property or persons upon that enclave."

In the present cases the Supreme Court of Louisiana found that exclusive jurisdiction over Barksdale Air Force Base was vested in the United States but held that exclusive jurisdiction over that portion of the reservation which was leased for oil and gas development became lost because that portion ceased to be used for military purposes. The state court further held that the State of Louisiana thus had the right to tax oil and gas severed from the lands included within the military reservation and to tax the gathering of gas on such lands.

This Court and inferior Federal Courts have had occasion to pass upon the question and to reach a conclusion opposite to that reached by the State Supreme Court. The State Supreme Court did not cite or attempt to distinguish the cases we are about to discuss, although these cases were pointed out to the Court.

In *Benson vs. United States*, 146 U. S. 325, 36 L. Ed. 991, it was contended that exclusive Federal jurisdiction over Fort Leavenworth Military Reservation became lost because a portion of these lands was being used for agricultural purposes. This Court held that the actual use to which a portion of the reservation might be put is

of no relevance in determining exclusive jurisdiction. The rule was announced that "the character and purposes of the occupation of the land having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire into the actual uses to which a portion of the reserve is temporarily put".

In *Arlington Hotel Company vs. Fant*, 278 U. S. 439, 73 L. Ed. 447, the question again arose. The hotel is situated within a Federal reservation in Arkansas over which the United States was ceded exclusive jurisdiction. The tract on which the hotel is operated was leased to the hotel company by the government. This case dealt with the applicability of the laws of Arkansas regulating the duty of inn keepers to their guests. This Court cited with approval the Benson case, held that exclusive jurisdiction has not been relinquished over the hotel tract and refused to apply the state law to the situation.

In *United States vs. Unzeuta*, 281 U. S. 138, 74 L. Ed. 761, there was involved the right of the United States to indict and try the defendant for a crime committed on a railroad right of way which traversed Fort Robinson Military Reservation in Nebraska. The railway company had been granted a perpetual easement for the purpose of conducting its business. This Court held that "the mere fact that a portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction" and that rights

of way for various purposes "may be entirely compatible with exclusive jurisdiction ceded to the United States".

In *Williams vs. Arlington Hotel Company*, 15 Fed. 2d 412, the plaintiff sought to collect for losses resulting from a fire while he was a guest of the hotel. Again, the question was whether the laws of ~~the United States~~ Arkansas applied. Plaintiff contended that exclusive jurisdiction was relinquished by reason of the lease to a private corporation. In overruling the District Court the Eighth Circuit held that such a contention was unfounded and that exclusive Federal jurisdiction obtained over the hotel area.

Thus it can be seen that, contrary to the view taken by the Supreme Court of Louisiana, this Court and other Courts have held that the temporary use to which lands are put by the United States has no effect on exclusive jurisdiction over the area.

The State Supreme Court cited the case of *S. R. A. vs. Minnesota*, supra, and stated that there the United States had parted with its title to property over which it had acquired exclusive jurisdiction and that for that reason the State could tax such property. The State Court takes the position that the execution of a mineral oil and gas lease by the United States is tantamount to a surrender of its exclusive jurisdiction over the area, thus permitting the State to impose its taxing power over this military area where no such right to tax previously existed. To say that *S. R. A. vs. Minnesota* is analagous to the cases at bar is to hold that it overrules the decisions of this Court in *Ben-*

son vs. United States, supra, *Arlington Hotel Company vs. Fant*, supra, and *United States vs. Unzeuta*, supra, all of which hold that a portion of a Federal reservation over which the government exercises exclusive jurisdiction may be put to private uses without the loss of exclusive Federal jurisdiction over such area. The import of *S.R.A. vs. Minnesota* is properly a matter for determination by this Court, rather than a State Court.

Moreover, Louisiana in her cession statutes put no limitation whatever on the use to which the Government may subject such land. Section 2 of Act 12 of her legislature for 1892 as amended by Act 31 of 1942 (quoted in full hereinabove under Section IV, "Constitutional Provisions and Statutes Involved") provides that the United States may acquire lands in Louisiana for military purposes "or for any other purposes of the government of the United States and shall have the right of exclusive jurisdiction over the property so acquired, during the time that the United States shall be or remain the owner or lessee thereof, for all purposes..."

By this legislative enactment, Louisiana with one hand in unmistakable terms gives to the United States rights and privileges which, with its other hand through its Courts, it seeks to take away.

We mention further that the respondent has judicially admitted that there has been no relinquishment of exclusive federal jurisdiction over any portion of Barksdale Air Force Base. All parties to this litigation stipulated and agreed as follows:

"... that the lands are known as Barksdale Air Force Base and were under the jurisdiction, custody and control of the Secretary of War from the date of acquisition until jurisdiction, custody and control thereover was assumed by the Secretary of the Air Force under authority of the Act of Congress approved July 26, 1947. Since that date to the present the said lands have been under the jurisdiction, custody and control of the latter officer.

"That continuously since acquiring the lands described in Exhibits A, B, and C, the United States has exercised such jurisdiction thereover as may have been vested in it by virtue of the Constitution and laws of the United States and of the State of Louisiana." (Pars. 3 and 4(a) of Stipulation, R. 135).

It is clear that only Congress can give to Louisiana the power to levy these taxes. Moreover, the holding by the State Supreme Court pointedly ignores the intention of the Government made manifest in the official statement of policy issued by the Department of the Air Force, the Public Land Order transferring limited jurisdiction over the area from the Department of the Air Force to the Department of the Interior and the terms of the protective oil and gas lease issued to petitioners, in all of which documents it is clear that the Government intended that primary military jurisdiction over the area would be preserved. The policy of the Department of the Air Force relative to protection of Government lands against loss from oil and gas drainage is found in the record as Exhibit F to the stipulation of November 9, 1952. (R. 154). It is dated September 21, 1949, and provides:

"1. The policy of the Department of the Air Force is to protect the interests of the United States from loss caused by drainage of sub-surface oil and gas deposits resulting from operations of private interests on lands adjacent to property under the jurisdiction of the Department of the Air Force, where such protection can be provided without interfering with the accomplishment of the primary military mission of the property concerned.

2. . . . . , it is considered that the interests of the United States can best be protected by the transfer of the oil and gas mineral rights to such property to the Department of the Interior, subject to such terms and conditions as will prevent interference with the accomplishment of the primary military mission of the property."

Public Land Order 701 transferring such jurisdiction to the Department of the Interior provides that the jurisdiction of the Interior Department shall be subject to the primary jurisdiction of the Department of the Air Force for Air Force purposes, that the lessees would be prohibited from using for any purpose the surface of approximately 430 acres included within the lease, and that prior to leasing, the approval of the Department of the Air Force would have to be obtained by the Department of the Interior to assure that there would be no interference with the primary use of the Air Base. (Exhibit G to Stipulation, R. 155).

The protective oil and gas lease granted by the Government, itself, respects the primary jurisdiction for military purposes and provides that no structure in excess

of 200 feet high may be erected, approximately one-fifth of the leased premises would have to be developed by directional drilling inasmuch as the lessees are not permitted to use the surface thereof, and the lessees must remove any derrick or other lease equipment if military operations so require. Furthermore, as evidence that the United States did not intend to relinquish exclusive jurisdiction, the lease itself provides for approval of certain drilling and production methods and proration by the Geological Survey and the Secretary of the Interior which would be inconsistent with jurisdiction in the State of Louisiana.

Petitioners submit that this State Supreme Court has decided a Federal question of substance in a way not in accord with applicable decisions of this Court.

2. A question of great public importance is involved in these cases, namely, whether there is any restriction on the nature of the use to which public lands over which the United States has exclusive jurisdiction can be put, at the risk of losing such exclusive jurisdiction in the event of any deviation from the principal use for which the lands were acquired. The question is not restricted to military lands, but involves the management by the Government of a large portion of the public lands throughout the forty-eight states.

Exclusive jurisdiction over military reservations is particularly desirable. The powers granted to the Federal Government under the Constitution of the United States are delegated powers. Among other such functions

granted exclusively to the Central Government is the power to wage war and to defend the republic. This impelling concept makes it imperative that overruling power be vested in the Federal Government if it is to carry out the functions assigned to it under our basic law. The War Department and the Department of Defense have, over a period of years, persuaded most or all of the States to relinquish all or substantial jurisdiction over military areas, vesting complete control in the United States. When a State consents to federal acquisition or voluntarily cedes its jurisdiction, then it loses its sovereignty over such areas and with such loss of sovereignty goes its power to tax. *Surplus Trading Company vs. Cook*, supra; *S. R. A. vs. Minnesota*, supra; *United States vs. Cornell*, 25 Fed. Cas. 648; *United States vs. Tucker*, supra.

The present case involves the proposition of whether, in the judicious management of its military lands, the United States should permit private abutting owners to drain oil and gas underlying Barksdale Air Force Base. The deliberate decision reached after many months of study was that a protective oil and gas lease should be granted. Is this act as a good administrator to result in the penalty of losing exclusive jurisdiction over the 2,060 acres of land embraced within the oil and gas lease? The highest Court of Louisiana has held that this penalty falls from the protective act on the part of the Government. It is suggested that the holding by this State Supreme Court would have been no different if the United States itself had drilled the wells on Barksdale Air Force Base in order to protect itself against drainage for the State

Court could still contend that the Government is not "militarily engaged" and exclusive jurisdiction would be relinquished. The next step, of course, is to invite the State Conservation authorities to exercise jurisdiction over these military lands instead of the Secretary of the Interior as the oil and gas lease clearly contemplates. Inroads by the State in this and all military areas and other federal areas would be invited if this decision is allowed to become law. The concept of exclusive federal jurisdiction, meticulously built up over a long period of time and recognized by practically all the States, would be destroyed. Hand in hand with tax power in the States and their subdivisions would come State police power and the imposition by the State of its criminal laws over the area. When this comes to pass, the entire purpose of Federal military control over the area will be thwarted and confusion will reign.

There is squarely presented in these cases the question of the right of a State to tax property physically located on a Federal reservation and thus extend the State's territorial jurisdiction into this enclave over which, the petitioners maintain, the United States has sole and exclusive jurisdiction. Such a question is one of such importance that it should be settled and put at rest by this Court. *Hamburg American Steamship Company vs. Grube*, 196 U. S. 407, 49 L. Ed. 529; *Silas Mason Company vs. Tax Commission of Washington*, 302 U. S. 186, 197; 82 L. Ed. 187, 196.

3. Another important question of public interest is involved in these cases, namely, whether the inclusion

in a lease from the United States of a provision requiring the lessee to pay State taxes "lawfully assessed" had the effect of legalizing a tax which otherwise could not lawfully be levied for lack of legislative jurisdiction. Apparently the State Supreme Court attached importance to Section 2 (7) (k) of the oil and gas lease wherein the lessees agree: "to pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, all other rights, property or assets of the lessee;". The Court said:

> "To follow the plaintiff's contentions, we must give no effect to the mandatory provisions of Section 2 (7) (k) of the lease in question, and we must likewise say that such a provision together with the pertinent authorities on constitutional questions by the Courts are mere abstracts affording no real protection". (R. 164).

The Buck Act (4 U.S.C. 105 et seq.) retroceded to the States the right to levy sales, use and income taxes within federal areas and the Hayden-Cartwright Act (4 U.S.C. 104) gave to the States the right to tax motor fuels sold within such areas. The question of whether a Government contracting officer can, without Congressional authority, confer on States the right to levy taxes which otherwise would be invalid for want of legislative jurisdiction, is of sufficient importance to be examined by this Court. In *S. R. A. vs. Minnesota*, supra, the effect of contracts to which the United States is a party was held to be of sufficient importance to be reviewed by this Court.

4. Another important question of public interest is whether decisions of this Court dealing with the immunity from State taxation of federal instrumentalities play any part in the question of a State's legislative jurisdiction over federal areas. Although the petitioners herein have claimed no such immunity, the State Supreme Court attaches importance to decisions by this Court of cases dealing solely with immunity from State taxation by the Government and its instrumentalities and contractors. (For example, *Helvering vs. Mountain Producers Corporation*, 303 U.S. 376, 82 L. Ed. 907, *Oklahoma Tax Commission vs. Texas Company*, 336 U. S. 342, 93 L. Ed. 721). The petitioners maintain that these decisions have no bearing upon the cases now before this Court which present solely the question of whether the United States enjoys exclusive legislative jurisdiction over the military area.

VII.

CONCLUSION

In view of the conflict in the decision of the Supreme Court of Louisiana in these cases with the decisions of this Court and the matters of great importance involved in the State Court decision, this petition for a writ of certiorari should be granted.

CLYDE R. BROWN
Ouachita Bank Building
Monroe, Louisiana

CLARENCE L. YANCEY
Commercial National Bank Building
Shreveport, Louisiana

C. McVEA OLIVER
Ouachita Bank Building
Monroe, Louisiana

PROOF OF SERVICE

I, Clarence L. Yancey, one of the attorneys for Murphy Corporation and Natural Gas and Oil Corporation, petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of July, 1954, I served a copy of the foregoing petition for certiorari on Rufus W. Fontenot, Collector of Revenue, State of Louisiana, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to John B. Smullin, Esquire, his Chief Counsel, and attorney of record at his office in the State Office Building, Baton Rouge, Louisiana.

.....

Clarence L. Yancey,
Attorney for Murphy Corporation and
Natural Gas and Oil Corporation
1500 Commercial National Bank Building,
Shreveport, Louisiana.

APPENDIX I

NUMBER 40,430 DIVISION A
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NATURAL GAS AND OIL CORPORATION
and MURPHY CORPORATION

vs.

WILLIAM A. COOPER, COLLECTOR OF REVENUE
OF THE STATE OF LOUISIANA

The facts and issues presented by this suit are correctly stated in plaintiffs' brief, and are as follows:

> "That the United States by virtue of the deeds listed in Article 2 (of plaintiffs' petition) acquired title to a large tract of land situated in Bossier Parish, Louisiana, including that which is included in the lease to plaintiffs; that the property so acquired once constituted a portion of the public domain, the United States having legally parted with its title thereto, and under the deeds aforesaid reacquired title thereto; that the lands were acquired by the United States for use as an army air force base, same have been and are now being used for such purpose, are known as 'Barksdale Air Force Base' and are now under the jurisdiction of the Secretary of the Air Force;

"That Article 1, paragraph 8, clause 17, of the Constitution of the United States prescribes that Congress shall have the power:

> 'To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.'

"That Act 12 of the Legislature of Louisiana 1892, as amended by Act 31 of the Legislature of Louisiana 1942, vested in the United States exclusive jurisdiction over property acquired by it for governmental purposes; that said act was carried forward in the Revised Statutes of Louisiana, Title 52, paragraph 1;

"That exclusive jurisdiction over the lands was formerly accepted by the Secretary of War and that this acceptance was formerly acknowledged by Louisiana;

"That during 1951 a determination was made that portions of the property embraced within the Barksdale Air Force Base were being extensively drained of minerals and, in order to protect said property of the United States, it was deemed expedient to offer to lease approximately 2,060 acres thereof;

"That under and in accordance with the decision so reached, jurisdiction over the oil and gas deposits

underlying portions of the acreage embraced within the Barksdale Air Force Base was transferred from the Department of the Air Force to the Department of the Interior, subject to the primary jurisdiction of the Department of the Air Force over said lands for air force purposes; that thereafter a lease was offered and at the offering Natural Gas and Oil Corporation and W. R. Stephens were the successful bidders. In due course a lease was executed, Exhibit 'A' attached to plaintiffs' petition;

"That W. R. Stephens assigned his interest to plaintiff, Murphy Corporation;

"That plaintiffs have produced oil from the lease and that the Collector of Revenue is insisting that a severance tax be paid thereon; that plaintiffs contend that no such tax is due owing to the fact that the lands from which oil is being produced are lands of the United States over which the State of Louisiana has ceded to the United States and the United States has accepted exclusive jurisdiction; and that any attempt by the Collector of Revenue to levy and collect such taxes contravenes Article 1, section 8, clause 17, of the Constitution of the United States;

"That plaintiffs have deposited under protest the amount claimed and advised the Collector of Revenue of their intention to file suit.

"Defendant has filed exceptions of no cause and no right of action, and same are now before the Court for determination."

Thus, the issues tendered on the exception of no cause or right of action present determination of the

question of whether or not the United States had acquired exclusive jurisdiction over the lands on which the lease was granted, and, if, in fact, the United States had acquired such jurisdiction, it has subsequently retroceded its exclusive jurisdiction to such an extent as to permit the State of Louisiana to collect a severance tax on the oil and gas produced by plaintiff from said lease.

Act 12 of the Louisiana Legislature of 1892, as amended by Act 31 of 1942 (now L. S. A. 52:1), by virtue of which the consent of the State of Louisiana was given to the acquisition by the United States of said property, provides:

> "Sec. 1. Consent of state to acquisition
>
> "The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during he time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.
>
> "The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."

It will be noted from an examination of said act that the State reserved only the right to serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States.

From a reading of the act, it is difficult to surmise in what language the exclusive jurisdiction could have been given to the United States over said land other than the language actually employed, for it not only grants exclusive jurisdiction over the property but goes further and specifically exempts said property from all taxation, assessments, or charges levied under authority of the State. For the reasons which will be hereinafter given, though this specific exemption is mentioned in the act, if the State had ceded exclusive jurisdiction to the United States, from a constitutional viewpoint the State would be thereby deprived from exercising any jurisdiction over the property.

It would appear, therefore, to me that there is no question but that the United States acquired exclusive jurisdiction over the land and unless there has been a retrocession of its jurisdiction, the State of Louisiana is without authority to levy or collect a severance tax on the oil extracted from the land.

In my opinion the Congress of the United States is the only authority which would have the right to cede back to the State of Louisiana any jurisdiction over the property herein involved. There is no act of Congress so providing, and therefore there can be no jurisdiction on the part of the State of Louisiana to levy and collect the severance tax on this lease.

In the case of Surplus Trading Company v. Cook, 281 U. S. 647, an effort was made by the County of Pulaski, Arkansas, to compel a purchaser of surplus

blankets stored and located within the limits of Camp Pike and the purchaser resisted the payment of the taxes, whereupon the Court held:

> "• • • the lands in which had been purchased by the United States, with the consent of the legislature of the state, for the purpose of establishing, erecting and maintaining such an army station; and that the tax laws of the state could not be applied to property so located without bringing them, in that regard, into conflict with article 1, paragraph 8, clause 17, of the Constitution of the United States, • • •"

See also S. R. A. v. Minnesota, 327 U. S. 558, and Yellowstone Park Transportation Company v. Gallatin County, 31 Fed. 2d 644.

In my opinion in so far as the State of Louisiana is concerned, this land, because of the exclusive jurisdiction granted to the United States, is beyond the power of the State to tax or control and the State is limited to such jurisdiction as the Congress of the United States may retrocede to it.

For these reasons, judgment is rendered and will be signed overruling the exceptions of no cause or right of action.

Baton Rouge, Louisiana, this July 21, 1952.

G. CALDWELL HERGET

JUDGE
19TH JUDICIAL DISTRICT COURT

NUMBER 40,430

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NATURAL GAS AND OIL CORPORATION
AND MURPHY CORPORATION

vs.

RUFUS W. FONTENOT, COLLECTOR OF REVENUE,
STATE OF LOUISIANA,
(FORMERLY VERSUS WILLIAM A. COOPER,
COLLECTOR OF REVENUE, STATE OF LOUISIANA)

By agreement of counsel, this case and case No. 41,234 entitled Murphy Corporation and Natural Gas and Oil Corporation against the same defendant (the Collector of Revenue of the State of Louisiana) were consolidated for the purpose of trial inasmuch as the same legal principles were involved.

Heretofore the legal question involved on the merits was raised in an exception of no cause or right of action filed on behalf of the Collector of Revenue of the State of Louisiana.

This Court, on July 21, 1952, disposed of these exceptions, for written reasons.

I have examined the briefs filed by both the plaintiffs and the defendant on the trial of the case on the merits and I am still of the opinion that the State of Louisiana has no jurisdiction over the property involved in this suit, and therefore, for the written reasons assigned in disposing of the exceptions of no cause or right of action, judgment is rendered and will be signed, in favor of plaintiffs, as prayed for.

Baton Rouge, Louisiana, this 18 day of May, 1953.

G. CALDWELL HERGET

JUDGE
19TH JUDICIAL DISTRICT COURT.

NUMBER 41,234

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MURPHY CORPORATION AND
NATURAL GAS AND OIL CORPORATION

vs.

RUFUS W. FONTENOT, COLLECTOR OF REVENUE,
STATE OF LOUISIANA,
(FORMERLY VERSUS WILLIAM A. COOPER,
COLLECTOR OF REVENUE, STATE OF LOUISIANA)

For the written reasons handed down in Number 40,430, judgment is rendered and will be signed in favor of the plaintiffs as prayed for.

Baton Rouge, Louisiana, this May 18, 1953.

G. CALDWELL HERGET
JUDGE
19TH JUDICIAL DISTRICT COURT.

APPENDIX II

SUPREME COURT OF LOUISIANA

MONDAY MAR 22 1954

No. 41,368

No. 41,369
(Consolidated)

Murphy Corporation, Et al

vs.

Rufus W. Fontenot, Collector of Revenue

Natural Gas and Oil Corporation, Et al

vs.

Rufus W. Fontenot, Collector of Revenue

On Appeal from the Nineteenth Judicial District Court for the Parish of East Baton Rouge. State of Louisiana.

Honorable G. Caldwell Herget, Judge.

Moise, Justice:

The issues being identical, these two cases were consolidated for the purposes of trial. The State of Louisiana, through its Collector of Revenue, Rufus W. Fontenot, imposed severance gas gathering taxes on fugitive gas captured by the plaintiff-lessees, Murphy Corporation, et al and Natural Gas and Oil Corporation, et al, from a

part of the lands of Barksdale Air Force Base. Plaintiffs paid these taxes, in the amounts of $2,371.29 and $1,191.04, respectively, under protest. This suit is for a refund of the money so paid. The district court rendered judgment as prayed for by the plaintiffs.

From that judgment the State of Louisiana prosecutes this appeal.

The following pertinent facts will be shown by the stipulation of record.

Feeling that it would be advantageous to the inhabitants of Shreveport, Louisiana and Bossier Parish, there was donated to the United States Government in the year 1930 by the City of Shreveport and the Parish of Bossier 22,000 acres of land in Bossier Parish, Louisiana to be used as an Army Air Force Base. The State of Louisiana donated the beds of the waters within the area. Thereafter, the Barksdale Air Force Base was constructed and was operated by the Secretary of War.

On April 16, 1943, the Secretary of War wrote a letter of acceptance to the Governor of the State of Louisiana in which he stated that the primary purpose of the land was for military purposes.

During the early part of 1951, a determination was made that a part of these lands which had been conveyed contained oil and gas deposits and were being drained by private enterprise engaged in the business of captur-

ing the fugitive oil and gas deposits from the soil and reducing such to private ownership. Protective measures from the drainage were sought and secured by the Government's selling exploratory rights to private purchasers or lessees who became the owners of all the severed minerals when they were captured, except a 2/8th royalty paid the U. S. Government.

On April 2, 1941, the then eminent Attorney General of the United States, after being called in consultation and after having a conference with the Cabinet and with the President of the United States, wrote an advisory letter to the President in which he directed that there was an implied authority in the President to take protective measures in cases where lands, acquired by the United States for a specific purpose, are found to contain minerals which are being drained by adjoining owners—such lands not being subject to the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended (U. S. C., title 30, sec. 181). It was also stated in the letter that if it were advisable, or more convenient, protective action could be taken by another department or agency. The Attorney General's letter stated:

> "If, however, it should be determined in particular cases that it is advisable or more convenient for the protective action to be taken by another department or agency it is within your power to transfer to the latter department or agency by Executive order the necessary authority, duty and jurisdiction with respect to the oil, to be exercised, how-

ever, upon the condition and to the extent that there is no interference with the primary use of the land."

Pursuant to this letter, and by virtue of Public Land Order 701, published in the Federal Register of February 28, 1951, Volume 16, No. 40, Page 1901, and pursuant to the authority granted by Executive Order No. 9337 of April 24, 1943, the right to sell leases of exploration for fugitive oil and gas in certain described tracts of Barksdale Air Force Base was transferred to the Department of the Interior with the provision that: "There is no interference with the primary use of Barksdale Air Force Base."

The Department of the Interior advertised for bids to carry out the measures of protection. Natural Gas and Oil Corporation and W. R. Stephens were the successful bidders. On July 31, 1951, W. R. Stephens assigned his undivided one-half interest to Murphy Corporation, one of the present plaintiffs.

In the lease granted to the plaintiffs, the usual clause common to such leases was included, with certain restrictions of operation, and the Government retained 2/8ths royalty rights in the oil and gas produced.

The leased land for the described purposes was 2,060 acres out of the 22,000 acres donated. The land leased was set apart from the land used for the governmental purposes of the Air Force Department. In fact,

there was a dividing fence between the oil field and the Air Force Base. These private owners were granted the right of use and control over all instrumentalities, owned and constructed by them, such as drilling machines, towers, tanks and pipe lines for their private commercial purposes to explore for oil and gas and to reduce such to private ownership. Under these considerations, the State of Louisiana imposed a non-discriminatory tax at the time of severance.

Upon severing gas from the leased lands, the plaintiffs paid the Louisiana Gas Gathering Severance Tax, R. S. 47:631 et seq., under protest and now contend that the exclusive jurisdiction of the United States over the lands from which the gas was extracted has divested the State of Louisiana of its jurisdiction to collect taxes by virtue of Article I, Paragraph 8, Clause 17, of the Constitution of the United States and Act 12 of the Louisiana Legislature of 1892 and Act 31 of 1942, R. S. 52:1

Article I, Paragraph 8, Clause 17 of the Constitution of the United States provides that Congress shall have the power to:

> "exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which

the same shall be, for the erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

The above facts show that the land leased was not to be used for the erection of a Fort, Magazine, Arsenal, dock-Yard or other needful Buildings for military purposes. When the Federal Government granted to the private oil operators the right of exploration for oil and gas for their private commercial purposes, it was not the intention to take away from the donating State the right to collect its severance taxes which apply to all operators alike within the territorial jurisdiction of Louisiana.

Act 12 of 1892 of the Legislature of Louisiana, as amended by Act 31 of 1942, carried in the Revised Statutes as 52:1 reads:

"The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purpose of the Federal Government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the State.

"The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."

It is self evident that the tax herein imposed is not levied on the property of the United States but on the property of the lessees, who use the gas and oil for their private commercial purposes.

We do not deny the exclusive federal jurisdiction over the donated lands or over any instrumentalities of the Federal Government, but our United States Supreme Court and the Attorney General of the United States have set out the navigable lanes for proper procedure. In fact, it was stated in the case of Fort Leavenworth R. Co. v. Lowe, Sheriff, 114 U. S. 525, 5 S. Ct. 995:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state than by purchase with her consent, they will hold the land subject to this qualification: that if upon them forts, arsenals or other public buildings are erected for the use of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its power, will be free from such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from state control is essential to the independence and sovereign authority of the United States, within the sphere of their delegated powers, *but, when not used as such instrumentalities the legislative power of the state over the places acquired will be as full and complete as over any other place within her limits.*" (Underscoring ours).

Under the above pronouncement, the authority to tax is vested in the State, and the immunity of the private owners under their theoretical concept is divested.

Act 12 of 1892, as amended, R. S. 52:1, was a legislative consent of the State of Louisiana to the donation of the lands herein involved. This consent was evidence, as shown from the facts, that property was exempt from taxation as long as it was used for military purposes. Exclusive legislative jurisdiction was granted to the federal government over the Air Base. The acceptance, as shown from the facts, by the Secretary of War states that the property is to be used for military purposes. When the Secretary of War transferred certain portions of the land to the Department of the Interior, and the Commandant of the Air Base certified that such leases would not interfere with the governmental operations of the Air Base, we had a splendid affirmative of the position taken by the State.

In the operation of the oil field, the lessees were not militarily engaged. The fugitive oil and gas when captured did not belong to the Federal Government but to private owners. No severance tax is levied against the Government nor is there any tax levied on the lands or the instrumentalities of the Federal Government.

There are no decisions on the same facts as set forth in the instant case, but we have the statutes of the United States and pertinent decisions on this Constitu-

tional question by which the Government can mold a sound public policy. Therefore, the question here is not:

"Who furnished the stone or owned the quarry?" but,

"Who sculptured the statue emblematic of the public policy?"

The agreement of the parties is the law of the case, and in that lease, in Section 2, under Rentals and Royalties, (7) (K), it is provided:

> "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States."

The present lease was not made under the Federal Leasing Act of February 25, 1920, 30 U. S. C. A., sec. 186 et seq., but the lease itself, especially Section 2(7) (K), incorporates many provisions of that statute.

The highest law officer in the Nation sculptured the design of the statute representing the public policy. The President gave the necessary orders under the direction of the sculpturer. The governmental department heads gave a loyal allegiance and faithful service to the pattern.

To follow the plaintiffs' contentions, we must give no effect to the mandatory provisions of Section 2 (T) (K) of the lease in question, and we must likewise say that such a provision together with the pertinent authorities on Constitutional questions by the courts are mere abstractions affording no real protection.

The case of Helvering v. Mountain Producers Corporation, 303 U. S. 376, 58 S. C. 623, held that the income received by a lessee under a lease from the state of Wyoming of lands granted to the state for school purposes was subject to federal income tax and immunity could not be claimed. The Court overruled the cases of Gillespie v. Oklahoma, 257 U. S. 501, 42 S. Ct. 171, 172, 66 L. Ed. 338, and Burnet v. Coronado Oil & Gas Co., 285 U. S. 393, 52 S. Ct. 443, 76 L. Ed. 815. The Court in citing decisions favorable to its view stated: (Chief Justice Hughes being the organ of the Court)

"These decisions in a variety of applications enforce what we deem to be the controlling view—that immunity from non-discriminatory taxation sought by a private person for his property or gains because he is engaged in operations under a government contract or lease cannot be supported by merely theoretical conceptions of interference with the functions of government. Regard must be had to substance and direct effects. And, where it merely appears that one operating under a government contract or lease is subjected to a tax with respect to his profits on the same basis as others who are engaged in similar businesses, there is no sufficient

ground for holding that the effect upon the government is other than indirect and remote. We are convinced that the rulings in Gillespie v. Okla., supra, and Burnet v. Coronado Oil & Gas Company, supra, are out of harmony with correct principle and accordingly they should be, and they now are, overruled."

The overruled cases had denied to Oklahoma the right to exact or enforce taxes from lessees of school lands and restricted Indian lands. Thus we see the dawning of a transition period in our jurisprudence.

The case of James, as State Tax Commissioner of West Virginia, v. Dravo Contracting Co., 302 U. S. 134, 58 S. Ct. 208, involved the question of whether a tax imposed by the state of West Virginia upon the gross receipts of a contractor under contracts with the United States was constitutional. The Court held that the tax did not interfere with the performance of federal functions and was a valid exaction. The Court stated:

"The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions without unduly limiting the taxing power which is equally essential to both nation and state under our dual system.*** We held in Willcuts v. Bunn, 282 U. S. 216, 51 S. Ct. 125, 75 L. Ed. 304, 71 A. L. R. 1260: 'The power to tax is no less essential than the power to borrow money, and, in preserving the latter, it is not necessary to cripple the

former by extending the constitutional exemption of taxation to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of the functions of government.'"

In the case of Wilson v. Cook, 327 U. S. 474, 66 S. Ct. 663, 90 L. Ed. 793, the State of Arkansas had legislative jurisdiction, and the Supreme Court of the United States made the following statement with respect to the assessed severance tax:

"We conclude that the state has legislative jurisdiction over the federal forest reserve lands located within it, whether they were originally a part of the public domain of the U. S., or were acquired by the United States by purchase, and that the tax assessed against plaintiffs is not subject to any constitutional infirmity, or to any want of taxing jurisdiction of the state to lay it with respect to transactions on the federal forest reserve located within the state."

In the cases of Oklahoma Tax Commission v. Texas Co.—Oklahoma Tax Commission v. Magnolia Petroleum Co., 336 U. S. 342, 69 S. Ct. 561, the Court stated:

"The principle question is whether a lessee of mineral rights in allotted and restricted Indian lands is immunized by the Constitution against payment of non-discriminatory state gross production taxes and state excise taxes on petroleum produced from such lands."

The United States Supreme Court held that since Congress had not immunized the lessees, and prior decisions had not brought about such legislation, Congress had accepted the decision of the Court permitting state taxation with equanimity. In permitting the tax, the Court stated:

"The Mountain Producers case was not decided on narrow, merely technical or presumptive grounds. Its very foundation was a repudiation of those insubstantial bases for securing broad private tax exemptions, unjustified by actual interfering or destructive effects upon the performance of obligations to or work for the government, state or nation. The decision came as the result of experience and of observation of the constant widening of the exempting process from tax to tax.

"Since that decision, as we have noted, the process has been reversed in direction. True intergovernmental immunity remains for the most part. But, so far as concerns private persons claiming immunity for their ordinary business operations (even though in connection with governmental activities), no implied constitutional immunity can rest on the merely hypothetical interferences with governmental functions here asserted to sustain exemption. In the light of the broad groundings of the Mountain Producers decision and of later decisions, we cannot say that the Gipsy Oil, Large Oil and Barnsdall Refineries decisions remain immune to the effects of the Mountain Producers decision and others which have followed it. They 'are out of harmony with correct principle,' as were the Gillispie and Coronado decisions and, accordingly, they should be, and they now are, overruled.

"We do not imply, by this decision, that Congress does not have power to immunize these lessees from the taxes we think the Constitution permits Oklahoma to impose in the absence of such action. The question whether immunity shall be extended in situations like these is essentially legislative in character. But Congress has not created an immunity here by affirmative action, and 'The immunity formerly said to rest on constitutional implication cannot now be resurrected in the form of statutory implication.'"

In the case of Esso Standard Oil Company v. Evans —U. S. v. Evans, 345 U. S. 495, 73 S. Ct. 800, the Court stated:

"The Constitution does not extend sovereign exemption from State taxation to corporations or individuals, contracting with the United States, merely because their activities are useful to the Government.***"

The case of S. R. A., Inc. v. State of Minnesota, 327 U. S. 558, 66 S. Ct. 749, involved property which had been owned by the United States but was later transferred to a private party who purchased from the United States under executory contract. The Court held that the property was subject to the taxation of Minnesota. In this case, it is stated that the sovereignty of the United States ended with the reason for its existence and the disposition of the property. "The relinquishment of the property to non federal hands is a relinquishment of the exclusive legislative power." We think the same relinquishment

exists in the present case as to oil and gas. We do not think that our present finding is contra to the holding made in the case.

The cases of Yellowstone Park Transportation Co. v. Gallatin County, 31 F. 2d 644, Cert. Denied, 280 U. S. 55, and Surplus Trading Co. v. Cook, 281 U. S. 647, 50 S. Ct. 455, cited by the trial judge, from their facts are not apposite.

It is not necessary to discuss the case of Mater v. Holley, 200 F. 2d 123, cited by counsel for the plaintiffs, since its authority is the Surplus Trading Company case, supra.

The Oklahoma case, supra, had one concurrence whereas the earlier cases had many dissents. We adhere to the modern trend so ably expressed in the above quoted citations. It is so much easier to find fault with a remedy proposed for protection than to propose remedies for protection that are faultless.

So in the case at bar, the theoretical concept, advanced by plaintiffs, of immunity, like an alien thread, should be discarded, and only when the pattern is complete in a consideration of the law and the facts and the procedure taken as a whole is a true solution of the case possible.

The adoption of plaintiffs' contention by our learned brother of the district court would in the future operate as an unwise boycott against the right of the State of Louisiana to levy non-discriminatory severance taxes.

For these reasons,

The judgments of the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, in these consolidated cases are reversed and set aside, and plaintiffs' suits are dismissed at their costs.

No. 41368)
) Consolidated
No. 41369)

MURPHY CORPORATION ET AL

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE

NATURAL GAS AND OIL CORPORATION ET AL.

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE

HAWTHORNE, J., Dissenting.

I am of the opinion that the State of Louisiana is without power to levy and collect the taxes here involved, and that the judgment of the district court should be affirmed.

The lands on which the gas was gathered and from which the oil and gas were produced are a part of Barksdale Air Force Base, a military air base owned by the United States, and under the stipulation of facts and the exhibits attached these lands in my opinion are under the exclusive jurisdiction of the United States by virtue of the provisions of Article I, Paragraph 8, Clause 17, of the Constitution of the United States and Louisiana Act

12 of 1898 as amended by Act 31 of 1942, in which the State of Louisiana surrendered and granted the right of exclusive jurisdiction to the United States.

Since the United States is vested with exclusive jurisdiction, the State is without power to levy and collect the taxes under the holding of the Supreme Court of the United States in the case of Surplus Trading Company v. Cook, 281 U.S. 647, 50 S. Ct. 455, 74 L. Ed. 1091. See also S.R.A., Inc. v. Minnesota, 327 U.S. 558, 66 S. Ct. 749, 90 L. Ed. 851.

I respectfully dissent.

FILED
NOV 5 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 221

MURPHY CORPORATION
and
NATURAL GAS AND OIL CORPORATION, PETITIONERS

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE,
STATE OF LOUISIANA, RESPONDENT

NATURAL GAS AND OIL CORPORATION
and
MURPHY CORPORATION, PETITIONERS

versus

RUFUS W. FONTENOT, COLLECTOR OF REVENUE,
STATE OF LOUISIANA, RESPONDENT

(Consolidated Cases)

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI

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(Consolidated Cases)

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI

Murphy Corporation and Natural Gas and Oil Corporation pray that this Court grant a rehearing of its order of October 14, 1954, denying the petition for Writ of Certiorari filed herein on July 19, 1954, and further pray that upon rehearing a Writ of Certiorari issue to review the judgment of the Supreme Court of Louisiana in these cases as prayed for in the petition.

REASONS FOR GRANTING A REHEARING AND ISSUING THE WRIT

I.

In addition to the reasons assigned in the petition for certiorari petitioners show that the writ should be granted because of the conflict between the decision in these cases by the Supreme Court of Louisiana and decisions by the highest courts of certain other states moreover other states will certainly follow the Louisiana decision, thereby creating further inconsistency in the law relating to jurisdiction over federal lands.

Since the filing of the petition for a writ of certiorari in these cases there has been published the decision by the Supreme Court of Arkansas in *Ludwig* vs. *Nance*, 267 S.W. 2d 314, wherein a conclusion was reached which is diametrically opposed to the holding of the Louisiana Supreme Court. Under a cession statute which cannot be distinguished from Louisiana's, Arkansas had granted exclusive jurisdiction to the United States over Hot Springs National Park, but state authorities attempted to enforce Arkansas laws regulating the practice of massage in privately owned bath houses. This was resisted on the ground that exclusive jurisdiction over the lands was vested in the United States and state laws were inapplicable thereon even though the bath houses had been leased to private persons and were being operated by them for their personal profit and advantage.

In *Commonwealth* vs. *King*, 68 S.W. 2d 45, Kentucky held that where the United States leased a portion

of Fort Knox to a bank, the State of Kentucky had no right to try a clerk of that bank under its criminal statutes. The Court said, "The mere fact that the building in which the offense was committed had been leased by the United States to the Union Bank of Stilton and was not being used at the time for military purposes is not controlling on the question of jurisdiction".

This case, the Ludwig case from Arkansas and numerous cases from other states cannot be reconciled with the holding of the Louisiana Supreme Court in the present cases. The Kentucky Court cited as its guide and discussed *Arlington Hotel Company vs. Fant*, 278 U.S. 439, *Benson vs. United States*, 146 U.S. 325 and *United States vs. Unzueta*, 281 U.S. 138. These cases were also followed by Arkansas. The Louisiana Court ignored them.

In *Arapajolu vs. McMenamin*, 340 P. 2d 310, a California court permitted a resident on property over which the United States had acquired exclusive jurisdiction to vote in California elections on the theory that concurrent jurisdiction over the lands was being exercised by both the United States and California because the Congress had seen fit to surrender to the states certain rights such as levying income and sales taxes and enforcing workmen's compensation and unemployment insurance laws. The Court said:

> "****It is clear that the Congress has surrendered to the states jurisdiction in substantial particulars over federal lands over which the United

States previously had exclusive jurisdiction. It may no longer be said of those lands that they are, as said by the Ohio Court in Sinks v. Reese, supra, 'as foreign to Ohio (California) as is the State of Indiana or Kentucky, or the District of Columbia.' "

In almost every state are lands belonging to the United States over which it exercises exclusive jurisdiction by virtue of consent and cession statutes. These laws were drafted in cooperation with federal authorities and are almost identical with the exception of certain reservations made by the states (these being immaterial here because Louisiana did not reserve the right to tax). The highest courts of most of these states have thus far upheld the paramount jurisdiction of the Federal Government over such areas and have denied to the states the power and authority to tax or regulate therein, unless expressly authorized by the Congress of the United States,' thus falling in line with the uniform holdings of this Court to that effect. *Surplus Trading Co. v. Cook*, 281 U.S. 647. *S.R.A. vs. Minnesota*, 327 U.S. 558. *Bowes vs. Johnson*, 306 U.S. 19.

The Louisiana decision and the California decision quoted from above, with Kentucky and Arkansas recently taking the opposing view, followed by most of the state

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1. Illustrative are: Johnson vs. Merrill (Cal.) 126 P. 2d 873; Schribner vs. Wickstrom (N.H.) 34 Atl. 2d 658; O'Pry Heating & Plumbing Co. vs. State (Ala.) 3 So. 2d 316; Employers Liability Assur. Corp. vs. Dileo (Mass.) 10 N.E. 2d 251; State vs. Deberry (N.C.) 32 S. E. 2d 617; State vs. Mack (Nev.), 47 P. 763; Lowe vs. Lowe (Md.) 133 A. 729; Independent School District of City of El Paso vs. Central E. D. Agency (Tex.) 247 S. W. 2d 597; Chaney vs. Chaney (N.M.) 209 Pacific 2d 782.

courts and this Court forcibly point up the confusion which is almost certain to arise hereafter with respect to the question involved and decided in these cases.[2]

Other cases, one involving the right of the state and parish to levy ad valorem taxes on property of petitioners herein located on Barksdale Air Force Base, and the other involving the right of the state and parish to levy ad valorem taxes upon a pipe line of a third corporation extending across Barksdale Air Force Base, are now pending in the District Courts of Louisiana.[3] In *Surplus Trading Co. vs. Cook*, supra, ad valorem taxes on property of private parties situated on Camp Pike, Arkansas, were involved and this Court held that such could not be imposed for lack of legislative authority in the state over the area. It can thus be seen that the state and the parish, certainly in the pipe line litigation, are now taking a position contrary to the holding in *Surplus Trading Co. vs. Cook* and thereby are attempting to thwart in every way possible the right of the Federal Government with respect to exclusive jurisdiction.

Likewise, Louisiana, through its Commissioner of Conservation, has for the first time undertaken to regulate the production and transportation of oil and gas pro-

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2. The Supreme Court of Louisiana unquestionably held that by granting the lease to petitioner, the United States relinquished its exclusive jurisdiction over the leased premises.

3. Natural Gas and Oil Corporation vs. W. E. Waggoner, Sheriff, No. 19,044, 26th Judicial District Court of Louisiana, and Interstate Oil Pipe Line Co. vs. Sheriff, No. 19,628, of said Court.

duced from these federal lands[4] in conflict with the authority of the Secretary of the Interior as contained in the lease here involved and appropriate federal regulations. This has occurred since the decision in these cases, and it is obvious that this exercise of authority results therefrom because for the three years prior thereto oil and gas had been produced solely under the authority of the Secretary of the Interior and the state had not undertaken to impose its authority. This could well afford another avenue of litigation which undoubtedly will find its way to this Court as it will be a conflict between a department of the Government of the United States and Louisiana.

If Louisiana is allowed to regulate the production and transporation of oil and gas on these lands through her regulatory body, then other states will undoubtedly follow this precedent and the Secretary of the Interior, who has authority over such matters under federal law, will be powerless to act irrespective of the wisdom of such state regulatory measures.

Further, the denial of Certiorari here will doubtless invite states and their taxing subdivisions to seize on all possible areas of taxation and regulation of activities on military lands. Already a city court is exercising civil jurisdiction over a large portion of the Barksdale Base. If this decision is allowed to stand, state authorities will be thus invited to broaden the scope of their control over

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4. Orders dated July 23, 1954, and October 11, 1954.
1954.

military areas, even to the point of carrying into effect thereon state political and social philosophy in the fields of civil liberties and racial segregation.

Arlington Hotel Co. vs. Fant, supra, was a case where this Court granted Certiorari to review a state court decision of Arkansas, whose consent and cession statute is similar to Louisiana's. The need for a Supreme Court decision in that case was apparent. Now Louisiana has decided the instant cases which appear to conflict with the Fant case. Thus, because of varying decisions by the Courts of Louisiana and California on the one hand and Courts of Arkansas, Kentucky and numerous other states on the other hand, again there has arisen the necessity for a review by this Court of the situation. If *Benson vs. U.S.*, supra, *U. S. vs. Unzeuta*, supra, *Arlington Hotel Co. vs. Fant*, supra and even *Surplus Trading Co. vs. Cook*, supra, are not still the law, then they should be overruled after full consideration of the principles involved and not by allowing state courts flagrantly to disregard them through the refusal by this Court to review their decisions.

If this case is allowed to stand, then the highest Court of each of the forty-eight states could place a different interpretation on an identical statute, and the rights of the United States would depend on the vagaries of a State Judge.

II.

Surely this Court should not refuse to review these decisions on the ground that they constitute an interpre-

tation by a state court of state laws. First, the extent of the rights granted to the United States under state consent to purchase and cession laws constitutes a federal question subject to interpretation by federal courts. *Silas Mason Company vs. Tax Commission of Washington*, 302 U. S.186, 197.[5] Second, it is not believed that the state court construed Louisiana's cession statute. We will discuss these points in order.

1. If it can be said that the state supreme court attempted to interpret Louisiana's consent and cession statutes as granting exclusive jurisdiction only when the property is used solely for military purposes, it becomes apparent that such an interpretation, without foundation therefor in the statutes, is not binding upon this Court in view of the fact that "it does violence to federal rights based upon the statute", and defeats the exclusive legislative authority of the federal government which the statute clearly purports to give and which the record discloses the Federal Government clearly expected to secure and maintain.

2. Act 12 of 1892 (appearing in full on pages 5 and 6 of the petition for certiorari) was passed by the

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5. This Court in the cited case, after stating that a Federal question was involved in that the state court had construed Washington's Statute, said (302 U.S. 207):
"We should accept that construction [by state court] unless we are satisfied that it does violence to federal rights based upon the statute, defeating the reasonable anticipation and purpose of securing through the operation of the statute an essential legislative authority for the Federal Government."

Louisiana legislature following an opinion by William Howard Taft, Solicitor General, dated January 25, 1892, which found an 1882 act to be deficient. When the lands comprising Barksdale Air Force Base were acquired by the Government in 1930, Act 12 of 1892 was in effect and all rights granted thereunder permanently attached subject to the right of the Congress to retrocede. Subsequently in 1942, Louisiana passed Act 31 (quoted in full on page 6 of the Petition for Certiorari). This act was an amendment to Act 12 of 1892 and amplified same. It was even broader than the former statute and granted additional legislative authority to the United States. Since the Barksdale lands were the property of the Government at that time, such additional rights as may have been ceded by the 1942 act became vested in the United States subject again to the authority of the Congress to retrocede. The author of the majority opinion of the Supreme Court of Louisiana was apparently unaware of the distinction between consent to purchase and cession statutes for nowhere in the opinion are the latter quoted, paraphrased, construed, or even discussed. In fact, the Louisiana Revised Statutes of 1950 are quoted as the law on the subject. This revision was adopted by the Legislature in 1950 and was to be a simplification and codification of Louisiana's laws. The person preparing the section relating to this subject can be said not to have understood the problem because in redacting Act 12 of 1892, as amended by Act 31 of 1942, he completely dropped the cession provisions of those statutes.

We had not attached any significance to the failure of the Supreme Court of Louisiana to consider the cession statute in effect at the time these lands were acquired and the one subsequently adopted because the court held that exclusive jurisdiction was vested in the United States over the property in question, but want to note everything which may have had bearing on the refusal to review these cases.

Also, we feel that this decision goes far beyond being an alleged construction of the state statute. The opinion (1) construes Article 1, paragraph 8, clause 17, of the Constitution of the United States; (2) cites and discusses the decision of this Court in *Fort Leavenworth Railroad Company vs. Lowe*, 114 U.S. 525, dealing with exclusive jurisdiction of the United States; (3) reviews at length the jurisprudence of this Court on the subject of immunity of the Government and its instrumentalities from state taxation (which petitioners have never asserted and which they contend are inapplicable here) and says that such decisions are in effect the foundation on which the conclusions reached by the court can be built; and (4) quotes from and construes a government contract of lease as requiring petitioners to pay a state tax which otherwise might not be due.

Even if the Louisiana decision in these cases involves an interpretation of Louisiana's cession statute, the highest court of the land should certainly review this decision because of the many federal questions of import-

ance which were reviewed, discussed, and apparently decided by the Supreme Court of Louisiana.

We believe it can be safely said that not only the petitioners but the State of Louisiana, the Department of the Air Force, the Interior Department, and probably the Department of Justice, all have assumed in this proceeding that the basic jurisdictional question here presented would be decided by this Court. Especially could this be so because Louisiana did not appear herein, opposing the petition for certiorari. This Court, by its order of October 14, 1954, in declining to review the Federal questions presented thereby accentuated rather than clarified the confusing situation .

Surely no public or private interest can be served by postponing this Court's consideration of the question of jurisdiction here involved until other cases conclude the long and laborious journey to this Court. Because of the importance of the question, it will doubtlessly be raised again and again throughout the nation unless set at rest. It may be assumed that this Court does not believe that this basic jurisdictional question is too unimportant to deserve the attention of this Court, and therefore should be committed permanently to the consideration of State tribunals.

CONCLUSION

For all the foregoing reasons, Murphy Corporation and Natural Gas and Oil Corporation pray that this petition for rehearing be granted, and that upon rehearing its petition for writ of certiorari be reinstated and granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

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PROOF OF SERVICE

I, Clarence L. Yancey, one of the attorneys for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on November 5, 1954, I served a copy of the foregoing Petition for Rehearing on Rufus W. Fontenot, Collector of Revenue, State of Louisiana, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to John B. Smullin, Esquire, his Chief Counsel and Attorney of record, at his office in the State Office Building, Baton Rouge, Louisiana.

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